314.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~385.~~ 356

THE UNITED STATES, APPELLANTS,

vs.

MARIA A. BURTON, WIDOW, NELLIE BURTON AND HENRY H. BURTON, CHILDREN AND HEIRS, OF HENRY S. BURTON, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 20, 1871.

Dec. 1871

SUPREME COURT OF THE UNITED STATES.

No. 585.

THE UNITED STATES, APPELLANTS,

vs.

MARIA A. BURTON, WIDOW, NELLIE BURTON AND HENRY H. BURTON, CHILDREN AND HEIRS, OF HENRY S. BURTON, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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1 *Transcript of the proceedings in case No. 407.*

PIO PICO, CLAIMANT,
vs.
THE UNITED STATES, DEFENDANT.

For the place named "Jamuel."

2

3 *Index of proceedings before board of land commissioners..*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that, on this twenty-third day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Pio Pico for the place named "Jamuel" was presented, and ordered to be filed and docketed with No. 407, and is as follows, to wit: (Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *Nov.* 25, 1854.

Case No. 407—Pio Pico for the place named "Jamuel"—was ordered to be placed at the foot of the 3rd-class cases on the trial docket.

SAN FRANCISCO, *Dec.* 7, 1854.

In the same case the deposition of Santiago E. Arguello, a witness in behalf of the claimant, taken before Commissioner Peter Lott,
4 was filed. (Vide page 4 of this transcript.)

SAN FRANCISCO, *Dec.* 19, 1854.

Case No. 407 was submitted without argument, and taken under advisement.

In the same case the deposition of Santiago E. Arguello, a witness in behalf of the claimant, taken before Commissioner Peter Lott, with document marked "Exhibit—P. L., No. 1," annexed thereto, was filed. (Vide page 6 of this transcript.)

SAN FRANCISCO, *Sept.* 25, 1855.

In the same case Commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim. (Vide page 27 of this transcript.)

And the following order was made, to wit: (Vide page 31 of this transcript.)

5 *Petition.*

To the board of commissioners for ascertaining and settling private land claims in the State of California:

Your petitioner, Pio Pico, a resident of the county of Los Angeles, in the State of California, respectfully represents to your honorable board

that he claims a certain tract of land, called "Jamuel," containing two sitios de ganado mayor, more or less, situated in the county of San Diego, in said State of California.

That he claims the same in fee by virtue of a grant made to him under the authority of the Mexican government by the señor commandant general and superior political chief of California, Don Manuel Victoria, bearing date April 20th, 1831, and approved by the territorial deputation on the 2nd day of June, 1846.

Your petitioner would further represent that judicial possession of said tract of land was given to him on the 9th day of July, 1831, and the boundaries thereof designated and defined, and that he and those claiming under him have been in the peaceable possession thereof ever since, and that he has no knowledge of any intervening claim.

6 Your petitioner presents herewith his espediente, containing a traced copy of the original grant of said land in the Spanish language, together with a translation of the same, and will make further proof of title, if required by the board. Your petitioner prays your honorable board to take into consideration his claim to said tract of land, and decree his title to be valid, and confirm the same. And your petitioner will ever pray.

SOUTHERLAND & CARR,
Attorneys for Petitioner.

Filed in office October 22nd, 1852.
(Signed) GEO. FISHER, *Secretary.*

Recorded in record of petitions, vol. 1st, pages 341 and 342.
(Signed) GEO. FISHER, *Secretary.*

Deposition of S. E. Arguello.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Dec. 6th*, 1854.

This day came before Peter Lott, commissioner for taking testi-
7 mony to be used before the board of United States land commissioners in said State, Santiago E. Arguello, a witness on behalf of the claimant, Pio Pico, in case number 407 on the docket of said board, and said witness, being sworn, deposes in Spanish, which is interpreted by the interpreter to said board as follows:

The United States associate law agent is present.

Questions by Judge Southerland for claimant:

1. Question. What is your name, age, and residence?

Answer. My name is Santiago E. Arguello; my age, forty years; my residence, San Diego, Cal.

2. Question. Are you acquainted with the rancho of Jamuel; if yea, state what you know of its boundaries and how you know them?

Answer. I am acquainted with the said rancho. It is bounded on the east by the Sierra Blanca; on the west by the portezuelo entrada de Jamuel; on the north by the portezuelo de Jamadra, and on the south by the cañada de San Blas. These boundaries embrace about two sitios de gañado mayor, or little more or less, in a cañada, very
8 narrow in some places not more than a mile in width, and widening out into a small valley, perhaps a league or more in width, towards

the north, forming altogether an irregular oblong shape. The rancho of Jamul, owned by Baudini, adjoins this rancho on the west; on the north the rancho of Jamacho adjoins. I know the boundaries of this rancho from having often been upon it. I have, with the permission of the owners, pastured my stock on portions of said rancho. I was present when my father, Santiago Arguello, gave juridical possession of said place to Don Pio Pico, in 1832 or 1833—I do not remember the date—and I then saw the boundaries all pointed out, and there was a tree marked on the south side and piles of stones placed at the other points I have mentioned.

3. Question. State what you know of the occupation of said rancho by Don Pio Pico.

Answer. Don Pio Pico lived on the place with his family in 1833. I was there and saw him; he lived there before the juridical possession was given; he had a small house, corrals, cattle, and horses on the place at that time, and cultivated a portion of the rancho; he had a field
9 enclosed and cultivated. He continued thus to occupy the place till 1836, or about that time, when the Indians came and killed 4 or five of his men, and carried off two of the children of his mayor domo, and burned his house and corral and destroyed everything.

Cross-examined by U. S. associate law agent:

1. Question. Have you ever been over the boundaries of said rancho?

Answer. I have been all over the said boundaries and I know them to be the boundaries, because I saw them established when the juridical possession was given, and saw them pointed out at that time.

SANTIAGO E. ARGUELLO.

Subscribed and sworn to before me this 6th day of December A. D. 1854.

PETER LOTT,
Commissioner.

Filed in office December 7th, 1854.
(Signed) GEO. FISHER,
Secretary.

Recorded in Ev. B., volume 11, page 48.
(Signed) GEO. FISHER,
Secretary.

10 *Deposition of S. E. Arguello.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *December 18th*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of United States land commissioners, Santiago E. Arguello, a witness on behalf of the claimant, Pio Pico, in case number 407, on the docket of said board, and said witness, being sworn, deposes as follows:

The United States law agent is present.

Questions by Judge Sutherland, for claimant:

1. Question. What is your name, age, and place of residence?

Answer. Santiago E. Arguello; my age is forty years; and my residence in San Diego, State of California.

2. Question. Are you acquainted with the handwriting of Pio Pico and José Maria Covarrubias? If yea, state your means of knowledge, and look upon the document now shown to you, marked P. L., Number 1, exhibit to the deposition, and say whether or not their signatures, where they occur in and upon said document, are their true and gen-
11 uine signatures.

Answer. I am acquainted with the handwriting of Pio Pico and José Matias Covarrubias, having often seen them write. Their signatures, where they occur on said document, are their true and genuine signatures; that of Pio Pico occurs once, and that of Covarrubias twice.

SANTIAGO E. ARGUELLO.

Subscribed and sworn to before me on this 18th day of December, 1854.

PETER LOTT,
Commissioner, &c.

Filed in office December 19th, 1854.
(Signed) GEO. FISHER, *Secretary.*

Recorded in Evidence B., vol. 11, page 87.
(Signed) GEO. FISHER, *Secretary.*

P. L., No. 1.—*Exhibit to deposition of Santiago E. Arguello.*

Pio Pico, vocal decano de la ex'ma departamental y gobernador provisional de las Californias.

[SEAL.] Por cuanto D'n Pio Pico ha pretendido para su beneficio personal la propiedad del terreno de Jamul que le fué concedido
12 provisionalmente en veinte de Abril de mil ocho cientos treinta y uno, por el señor comandante general y gefe superior politico, D'n Manuel Victoria, como consta en el espediente respectivo; usando de las facultades que me son conferidos á nombre de la nacion mejicana, he venido por decreto de este dia en concederle el espresado terreno, declarandole la propiedad de él por las presentes letras de conformidad con la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de 1828, á reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones presentes:

1ª. Lo disfrutará libre y esclusivamente, destinandolo al uso y cultivo, que mas le acomode.

2ª. El terreno de que se le hace donacion, es de la estencion de dos sitios de ganado mayor, poco mas ó menos, segun explica el diseño que obra en el espediente. El jues respectivo le dará la posesion judicial en virtud de este despacho, por el cual se demarcarán los linderos con las mojoneras necesarias.

En consecuencia mando que teniendose el presente titulo por firme y validero, se tome razon de el en el libro á que corresponde, y se
13 entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de Los Angeles, en este papel comun, por falta del sellado, á veinte y tres de Diciembre de mil ocho cientos cuarenta y cinco.

PIO PICO.

JOSÉ M'A COVARRUBIAS, *S'io.*

Queda tomada razon de este título á f's del libro respectivo.
Angeles, fecha ut supra.

COVARRUBIAS.

Filed in office Dec. 19, 1854.

GEO. FISHER, *Sec'y.*

Translation of P. L., No. 1.—*Exh't to deposition of S. E. Arguello.*

Pio Pico, senior member of the most excellent departmental assembly, and provisional governor of the Californias.

[L. S.] Whereas Don Pio Pico has petitioned for his personal benefit the ownership of the tract of land named Jamul, which was granted to him provisionally on the 20th of April, 1831, by the señor commandant general and superior political chief, Don Manuel Victoria, as set
14 forth in the respective espediente.

In the exercise of the powers with which I am invested in the name of the Mexican nation, I have concluded by a decree of this day to grant to him the aforesaid tract of land, hereby declaring unto him the ownership thereof in conformity with the law of the 18th of August, 1824, and the regulation of the 21st November, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He shall enjoy it freely and exclusively, appropriating it to the use and cultivation most convenient to him.

2nd. The tract of land hereby granted is of the extent of two square leagues, a little more or less, according to the diseño forming a part of the espediente.

The respective juez shall give him juridical possession thereof in virtue of this title, by which the boundaries shall be designated by the necessary land-marks.

Therefore, the present title being held as firm and valid, I order it to be recorded in the corresponding book, and that it be delivered to the interested party for his security and other purposes.

15 Given in the city of Los Angeles on this common paper, for the want of stamped, on the 23rd of December, 1845.

(Signed) PIO PICO.

(Signed) JOSÉ M'A COVARRUBIAS,
Secretary.

Record is made of this title in the proper book.
Angeles, date as above.

(Signed) COVARRUBIAS.

(S'g'd) GEO. FISHER, *Secretary.*

Filed in office December 19th, 1854.

(Signed) GEO. FISHER, *Secretary.*

B.

1 S. D. K.

1845.

Espediente promovido por D'n Pio Pico, en pretencion del terreno de Jamul.

2. S. D. K.—Espediente continued.

493.

Sello 3o. Dos reales.

Habilitado provicionalm^te^ p'r la com^a^ principal provicional de la Alta California, para los años de 1830 y 1831.

[A RUBRIC.] BAUDINI.

16

MONTEREY,
Abril 20 *de* 1831.

El interesado en esta instancia podrá ocupar provisionalm^te^ un sitio en el parage llamado Jamul, con objeto de cultivar sus tierras y mantener, sus ganado en los q^e^ sean puramente de abrerado; permitiendose tambien provisionalmente, el uso del fierro y señal de q^e^ hace mension y acompaña en oja separada; la q^e^ rubricada p^r^ mi se tomará la razon correspond^te^ en el libro respectivo q^e^ obra en esta secretaria.

VICTORIA.

S'or gefe sup'or politico:

Pio Pico, vecino y residente en este p'to de San Diego, con el respeto devido, hace á V. S. presente que teniendo en la actualidad el numero de quinientos cabezas de ganado mayor y como doscientos de caballado, y careciendo de un sitio en donde poder asegurar dichos intereses, obligado yá por los graves perjuicios que se le orijinan por carecer de una suerte de tierra en donde poderlos reducir, suplica á V. S. encarecidamente se sirva decretarle si tubiere á bien la consecion de un paraje provicional en que le pueda mantenerlos y hacer algunos siembras que le puedan prestar la comodidad y subsistencia de una crecida familia, á que esta obligado á socorrer.

Al efecto si V. S., penetrado de sus razones biniere en acceder á esta suplica solicita le conceda la concecion provicional del paraje llamado Jamul.

17 Este sitio está baldio; se halla distante de este presidio siete ó ocho leguas, queda á la parte del oriente.

3 S. D. K.

Se comprende el expresado sitio de una volsa formada de tres sierras, que poco mas ó menos tiene de ancho media legua y de largo como dos; tiene tres aguajes, uno en la entrada del sitio, otro en el medio, y otro en lo interior, que estos mantienen aguas permanentes en todo el año.

Los bosques que la ocupan son ningunos, y solamente algunos arbustos de sauces y alisos muy dispersos, que no impiden en nada á la fertilidad de las tierras y abundancia de los pastos.

Los colindantes que hay en las inmediaciones son, el rancho de la Nacion que dista de tres á cuatro leguas al rumbo del noroeste; el rancho de los Lopez, distante dos leguas, que da al oriente; la mision de S. Diego, queda asia al norte y dista como seis leguas; el rancho llamado la Tia Juana, esta al sur á siete à ocho leguas de distancia.

El fierro y señal que para la distincion de estos bienes he usado es el que V. S. verá en la adjunta foja estampado.

S'OR: Espero que V. S., al estampar el decreto que solicito, tome
18 en concideracion la necesidad que me rodea por no tener en donde poner el numero de vienes que dejo referidos, y se sirva, si es que me concidera acredor y no encuentra embarazo al efecto, me lo conceda provicional para fomentarlo.

4. S. D. K.

Sello 3o. Dos reales.

Habilitado provicionalm^te p^r la com^a principal provicional de la Alta California, para los años de 1830 y 1831.

[A RUBRIC.] BAUDINI.

Con mis intereses y persona coadyudando por este medio al fomento y prosperidad de este territorio: Por tanto, A. V. S. pido y suplico se sirva acceder á esta mi solicitud de lo que quedará sumamente agradecido.

Puerto de S. Diego, 22 de M'zo 1831.

PIO PICO.

Queda tomada la razon correspondiente en el libro de registros á fs. 77, q^e obra en la secretaria de mi cargo.

Monterey, Abril 20 de 1831.

AGUSTIN V. ZAMORA

5 S. D. K.

S. DIEGO, *Julio* 9 *de* 1831.

En el dia de la f'ha, conforme el anteced^te dect'o, se puso en posesion provisional del paraje nombrado Jamul, al C. Pio Pico, haviendose demarcado, á poco mas ó menos desde su entrada de d'ho Jamul
19 Cañada adentro, como una legua rumbo al oriente, tomando la falda que hace el vallecito de este nombre; de N. á S. como otra legua, viniendo à rematar à la misma entrada p^r otra cañada, de modo q^e forma el sitio un triangulo de largo como una legua, p^r lo mas ancho otra; idviniendo a asi en diminucion h'ta juntarse en la entrada d'ha de Jamul. A cuyas operaciones asistieron de testigos, el soldado Juan Rodriguez y vecino Isidoro Guillen; y p^a la devida consta lo firmo como comand^te militar de este punto, encarg^do de los reg^a civiles de su jurisdiccion.

SANTIAGO ARGUELLO.

6 S. D. K.

ANGELES, *Diciembre* 23 *de* 1845.

Como lo pide: libresele el titulo que le de la propiedad del terreno de Jamul, y reservese el espediente para someterlo á la aprobacion de la ex. asamblea departamental.

PICO.

JOSÉ M'A COVARRUBIAS,
S'rio.

Ex'mo, s'or gobernador:

Pio Pico, ante V. E., como mas haya lugar, en derecho parezco y digo que como consta en el adjunto espediente soy poseedor provicional desde el año de 1831 del terreno de Jamul, y que deseando tener la propiedad efectiva y directa de él, suplico á V. E. se sirva librarme al efecto el titulo correspondiente, admitiendome en este papel comun por no haber del sellado.

20

ANGELES, *Diciembre* 23 *de* 1845.

PIO PICO.

7. S. D. K.

Pio Pico, vocal decano de la ex'ma. asamblea departamental y gobernador provisional de las Californias.

Por cuanto D^{n}. Pio Pico ha pretendido para su beneficio personal la propiedad del terreno de Jamul que le fue concedido provisionalmente en veinte de Abril de mil ochocientos treinta y uno, por el s'or comandante general y gefe superior politico D^{n}. Manuel Victoria, como consta en el espediente respectivo; usando de las facultades que me son conferidos à nombre de la nacion mexicana, he venido por decreto de este dia en concederle el expresado terreno, declarandolo la propiedad de él por las precentes letras de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828, á reserva de la aprobacion de la ex'ma asamblea departamental, y bajo las condiciones siguientes.

1^{a}. Lo disfratara libre y esclusivamante, destinandolo al uso y cultivo que mas le acomode.

8. S. D. K.

2^{a}. El terreno de que se le hace donacion, es de la estension de dos sitios de ganado mayor, poco mas ó menos, segun esplica el diseño que obra en el espediente.

21 El juez respectivo le dará la posesion judicial en virtud de este despacho, por el cual se demarcaran los linderos con las mojoneras necesarias.

En consecuencia mando que teniendose el presente titulo por firme y valedero, se tome razon de él en el libro á que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en la ciudad de Los Angeles, en este papel comun por falta del sellado, á veinte-tres de Diciembre de mil ochocientos cuarenta y sinco.

Queda tomada razon de este titulo en el libro respectivo.

Angeles, Marzo 8 de 1846.

Dado cuenta en sesion de hoy con este espediente á la ex'ma asamblea departamental, se mandó pasar á la comision de terrenos baldios.

PIO PICO, *Prest'e.*

AGUSTIN OLVERA.

9. S. D. K.

SEÑOR: La comision de terrenos valdios a examinado con detenimiento el presente esped^{te} promovido p^{r} el C. Pio Pico q^{e} le fue concedido p^{r} el sup^{r}. gob^{o} dep^{l}. con arreglo à las leyes de la materia p^{r} cuya

22 virtud pone á la deliveracion de V. E. la proposicion signiente:

Se aprueba la concesion hecha al ciud^{o} Pio Pico, del parage Jamul, jurid^{on} de S. Diego, con estencion de dos sitios de ganado mayor, poco mas ó menos segun titulo librado, q^{e} con f'ha 23 de Diciembre del p^{o} p^{do}, en conformidad con la ley de 18 de Ag' to de 1824, y el art'o 5 del reglamento de 21 de No'bre de 1828.

Sala de com^{s} en la ciudad de Los Angeles, Mayo 22 de 1846.

S. ARGUELLO.

10. S. D. K.

ANGELES, *Junio* 2 *de* 1846.

En sesion de este dia aprobó la ex'ma asamblea departamental la proposicion del dictamen anterior.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the ten preceding and hereunto annexed pages of tracing paper numbered
23 from one to ten, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., the 25th day of August, 1852.

[S. D. K.] SAM'L D. KING,
Surv'r Gen'l Cal.

Filed in office Oct. 22d, 1852.

GEO. FISHER, *Sec'y.*

C.—*Translation.*

1845.

Espediente at the instance of Don Pio Pico, claiming the tract of Jamul.

415.

Seal third. Two reales.

Provisionally ordered by the principal provisional commander of Upper California, for the years 1830 and 1831.

[SEAL.] BAUDINI.

24 MONTEREY,
April 21*st*, 1831.

The interested party in this instance can occupy provisionally a in the place called Jamul for the sitio purpose of cultivating its lands and taking care of his cattle on those that are purely pastured, permitting him also, provisionally, the use of the brand and mark of which he makes mention, and of the out-house, on a separate sheet, which, being certified by me, shall be properly recorded in the proper book, which is kept in this secretaryship.

VICTORIA.

To the superior political chief:

Pio Pico, inhabitant and resident in this district of San Diego, with due respect, represents to your honor that he has actually five hundred head of ganado mayor, and about two hundred of horses, and is absolutely in need of a place where he can secure the interests aforesaid. Already affected by the serious injuries which he has sustained from the want of a proper place to keep and reduce them, he beseeches your excellency to be pleased to decree to him, if you think it proper, the provisional concession of a tract of land which he may be able to raise

them and grow crops, affording comfort and sustenance to a growing family, whom he is obliged to support.

Wherefore, if your excellency should deem it proper to accede to this petition, he solicits you to grant him the concession of the place called Jamul. This place is vacant, and is distance from the presidio from seven to eight leagues, towards the east.

The above-mentioned tract of land consists of a bolsa (valley)
25 forward by three ridges, which is half a league in width, and about two in length, and has three ponds, one at the entrance to the tract, the other in the middle, and the other in the interior, which water permanently all the year.

There is no timber upon the land except a few small willows and sycamores scattered about, which do not in any manner injure the fertility of the land and abundance of the pasturage.

The boundaries in its vicinity are the rancho de la Nation, which is distant some three or four leagues from the zambo, from the northwest; the rancho of the Lopez, distant two leagues, from the east; the mission of San Diego, also from the north, and distant some six leagues.

The rancho called la tia Juava is at the south, distant seven or eight leagues. The fierros y señal which has been used for the distinction of this property are those which your excellency will find in the following page verified:

SIR: Hope your honor will, at the issuance the decree which I solicit, will take into consideration the necessity which surrounds me on account of not having a place whereon to place the number of my cattle, to which I have already referred, and that you be pleased, if you
26 consider me entitled (acredito) to any rights, and if you find no obstacle, to the effect that you may concede it to me provisionally, to cultivate it with my property and person—

(Seal third. Two reales.

Provisionally authorized by the principal provisional commandancia of Upper California for the years 1830 and 1831.

[SEAL.] BAUDINI.)

—Assisting by this means to the increase and prosperity of this territory.

Wherefore I beseech and supplicate your excellency that you may be pleased to accede to this my petition, for which I will remain extremely grateful.

Port of San Diego, 22nd of March, 1831.

PIO PICO.

Properly recorded in the book of registries at page 77, which is carried on in the secretary's office, under my charge.

Monterey, April 20th, 1831.

AUGUSTIN V. ZAMORANO.

SAN DIEGO, *July 9th*, 1831.

At the day, conformably to the foregoing decree, was put in provisional possession of the place called Jamul, the citizen Pio Pico, having been marked at more or less from the entrance of said Jamul, within
27 the cañada, about a league on an eastern line, taking the side of the hill which forms the valley of this name, from north to south about another league, coming to end at the same entrance by another cañada, so that the sitio forms a triangle, in length about one league, and in the breadth part another league.

Proceeding thus, gradually diminishing until they come to a point at the said entrance of Jamul; at which operations, assisted as witnesses, the soldier Juan Rodriguez, and the neighbour Guillen, and for its proper proof I sign it as military commandant of this point in charge of the civil affairs of its jurisdiction.

SANTIAGO ARGUELLO.

ANGELES, *December* 23*rd*, 1845.

As he asks, let there be delivered to him a title which may give him the ownership of the land of Jamul.

And let the espediente be reserved to be submitted to the approval of the excellent departmental sssembly.

PICO.

JOSÉ MARIA COVARRUBIAS,
Secretary.

Most excellent governor:

Pio Pico, before your excellency, as it is his privilege by law, appear' and say' that, as it appears in the subjoined espediente, I am the provisional possessor, from the year 1831, of the tract of land of Jamuel, and desiring to hold the actual and direct ownership of it I be-
28 seech your excellency that you may be pleased to deliver me, in effect, the corresponding title, admitting me this on common paper as there is none stamped.

Angeles, December 23rd, 1845.

PIO PICO.

Pio Pico, senior vocal of the most excellent departmental assembly and provisional governor of the Californias.

Whereas Don Pio Pico has petitioned for his personal benefit for the ownership of the tract of the land of Jamul, which was provisionally granted him on the 20th of April, 1831, by the señor commandante general and superior political chief, Don Manuel Victoria, as appears in the proper espediente; in virtue of the powers which are conferred upon me in the name of the Mexican nation, I have, by decree of this day, conceded to him the said tract of land, declaring it his property by these presents, in conformity with the law of the 18th of August, 1824, and the regulation of the 21st of November, 1828, subject to the approval of the most exc't dep't assembly, & under the following conditions:

1st. He may enjoy it freely and exclusively, devoting it to the use and culture most agreeable to himself.

2nd. The land of which donation is made, is of the extent of
29 two sitios de ganado mayor, more or less, as appears by the map or design annexed to the espediente.

The proper judge shall give him the juridical possession in virtue of this decree by whom the lines shall be marked with the necessary landmarks.

In conclusion, I decree that the present title being held firm and valid, that it be recorded in the proper book, and that it be delivered to the interested party for his security and further ends.

Given in the city of Los Angeles, on this common, for the want of stamped, paper, the twenty-third of December, 1845.

This title is recorded in the proper book.

Angeles, May 6th, 1846.

Reported in session of to-day, with this espediente, to the most excellent departmental assembly, it was ordered to be referred to the committee on vacant lands.

PIO PICO, *President.*

AGUSTIN OLVERA, *Dep. Secretary.*

SIR: The committee on vacant lands has examined, with care, the present espediente, at the instance of the citizen Pio Pico, which was granted to him by the superior departmental government in
30 conformity with the laws on the subject, in virtue of which is submitted to the deliberation of your excellency the following proposition:

The grant made to the citizen Pio Pico of the place of Jamul, in the jurisdiction of San Diego, with the extension of two sitios de ganado mayor, more or less, according to the title delivered at the date of the 3rd of December of the past year, is approved in conformity with the law of the 18th of August, 1824, and of article 5th of the regulations of the 21st of November, 1828.

Hall of the committee, city of Los Angeles, May 22nd, 1846.

S. ARGUELLO.

ANGELES, *June 2nd*, 1846.

In the session of this day the most excellent departmental assembly approved the preceding report.

Filed in office October 22nd, 1852.

(Signed) GEO. FISHER,
Secretary.

31 *Opinion of board, by Com'r Farwell.*

PIO PICO *vs.* THE UNITED STATES. } For the place called "Jamunal," in the county of , containing two square leagues.

The petitioner, in this case, has offered in evidence in support of his claim, a traced copy from the archives in the office of the surveyor general, of a petition addressed to the governor, asking for a provisional grant to said land, dated March 23d, 1831, with a marginal concession thereon, by Governor Victoria, dated in April following, authorizing the petitioner to occupy one league of the land.

He has also offered in evidence a traced copy of another petition, dated the 23d day of December, 1845, addressed to himself, he being governor at the time, upon which he enters a marginal note, directing a grant to issue to himself for the place embracing two leagues of land; and, in pursuance thereof, issues to himself in full property, which it appears received the approval of the departmental assembly.

The evidence also shows that Pico had possession of the place up to about three years from the date of the provisional concession, at which time the Indians killed some of his men, burned a house on the place, and drove off some of his stock.

32 It does not appear that he ever made any move towards reclaiming his possession from that date, until the latter part of the year 1845, nearly eleven years, when he applies to himself for a grant in full property, not only to the one league specified in the concession, but for an extension of one league more.

In his application to Gov. Victoria, he only asks a temporary use and occupancy, and that is all that was conceded to him by the governor, and all the right acquired thereby would cease at any time when Pico abandoned the possession and occupancy thereof.

There seems to be some apology for his quitting the possession at the time he did, but none at all for his letting the matter sleep for the space of nearly eleven years without making any demonstrations of an intent to reclaim possession.

We think there has been no right established to a confirmation by virtue of the concession of Governor Victoria, and it now remains to be determined what rights were acquired by the petitioner, by the subsequent proceedings.

Pio Pico, as governor of the province of California, interested
33 with the disposition of the public domain of the government within his province, under certain rules and regulations prescribed, and under ordinary circumstances in making such disposition, would be presumed to be acting within the scope of his delegated powers; but in this case he has taken upon himself the responsibility of donating to himself two leagues of the land belonging to his government, without bringing himself within any of the provisions of the colonization laws by settling upon the same, or improving it in any manner, or paying to the government anything in consideration therefor.

We think that the act of Pio Pico in the premises, in donating to himself the land of the government, is without precedent, without authority of law, and consequently void.

Could then the act of the departmental assembly validate, by their approval of the acts of Pio Pico in the premises, which was absolutely void, give to it any vitality? We think not.

Nothing short of a granting power could cure the defect, and it will not be pretended that that power vested in the departmental assembly.

Their power in the premises was limited to the approval of the
34 acts of the executive when legitimately exercised in the granting of lands.

We do not think, from the proofs, that this claim is a valid one, and a decree will be entered rejecting the same.

Rejected.

Filed in office Sept 25, 1855.

GEO. FISHER, *Sec'y.*

Decree rejecting claim.

PIO PICO
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commissioners that the claim of the said petitioner is not valid; and it is therefore decreed that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office Sept. 25, 1855.

GEO. FISHER, *Sec'y.*

35 *Order.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other shall be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby the foregoing thirty-one pages, numbered from 1 to 31, both inclusive, to contain a true, correct, and full trans-
36 cript of the record of the proceedings, and of the decision of the said board; of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in the office, in case No. 407, on the docket of the said board, wherein Pio Pico is the claimant, against the United States, for the place known by the name of "Jamuel."

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this tenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

[SEAL.] GEO. FISHER, *Sec'y.*

(Endorsed:) Filed Jan'y 19th, 1856. C. E. Carr, cl'k.

37 *Notice of appeal.*

PIO PICO, APPELLANT, *vs.* THE UNITED STATES, APPELLEE. } Transcript No. 407. Docket No. 367. "Jamuel."

You will please take notice that in the above-entitled cause, decided by the commissioners to ascertain and settle the private land claims in the State of California, and a transcript of which was filed in the office of the clerk of the United States district court for the southern district of California on or about the 19th day of January, A. D. 1856, the appeal in the district court of the United States for the southern district of California will be prosecuted by Pio Pico, the said appellant.

MYRON NORTON,
Att'y for Appellant.

(Endorsed:) Filed Feb'y 29th, 1856. C. E. Carr, cl'k, by O. Morgan, dep'ty.

38 *Petition for review.*

In the United States district court for the southern district of the State of California.

PIO PICO, APPELLANT,
vs.
THE UNITED STATES, APPELLEES. } Case 367. Jamul.

To the Hon. Isaac S. K. Ogier, district judge of the United States for the southern district of the State of California:

Your petitioner, Pio Pico, a resident of the county of Los Angeles, in said district, respectfully represents that he was the claimant before the board of U. S. land commissioners to ascertain and settle private land claims in the State of California, in case No. 407, situate in the county of San Diego, in said district, containing about one square league of land, called "Jamul."

That said tract of land was granted to your petitioner by Manuel Victoria, then constitutional governor of California, by virtue of authority in him vested, on the 23d day of March, 1831.

39 Your petitioner further says that, on the hearing of said claim by said commissioners, the same was rejected, and declared to be invalid.

That a transcript of the said commissioners and of the documentary evidence and testimony of the witnesses in said case was duly filed with the clerk of this court on the 19th day of January, 1856, and that, on the 29th day of February, 1856, the said claimant filed in the office of said clerk a notice of his intention to prosecute an appeal from the decision of the said commissioners.

Your petitioner therefore prays that this hon. court will review the decision of the said commissioners, and decide on the validity of said claim, and declare the same to be good and valid, and for further and general relief.

THO'S W. SUTHERLAND,
Att'y for Claimant,
By M. NORTON.

(Endorsed:) Filed 4th March, 1858. C. Sims, cl'k, by J. H. Coleman, dep.

40 *Answer.*

In the district court of the United States for the southern district of California, Los Angeles. December term, 1857. Hon. Isaac S. K. Ogier, judge.

PIO PICO, APPELLANT,
vs.
THE UNITED STATES, APPELLEES. } No. 367. Transcript No. 407.

On appeal from the U. S. commission to ascertain & settle private land claim' in California.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of Pio Pico for review of the decision of the United States

land commissioners, says that he denies, all and singular, each and every allegation in said petition contained. And, further, this respondent denies generally the validity of the alleged title of the claimant to the land claimed by him.

And the said respondent prays that this hon. court will affirm the decision of the said commissioners in said case, and decree the said
41 alleged title to be invalid, and general relief.

P. ORD,
U. S. Attorney.

(Endorsed:) Filed 4th March, 1858. C. Sims, cl'k, by J. H. Coleman, dep.

Decree rejecting the claim.

United States district court for the district of California.

PIO PICO, APP'L'NT,
vs.
THE UNITED STATES, RESPONDENTS.

Appeal from the b'd of U. S. land commissioners to the U. S. district court for the southern district of California, No. 407 on the docket of the land commissioners, and No. 367 on the docket of U. S. dist. court for the southern district of California.

Whereas the above-entitled claim of Pio Pico for two leagues of land in the county of San Diego, named the rancho "Jamul,"
42 was submitted to the late United States district court for the southern district of California, on the 4th March, 1858;

And whereas, in the minutes of said court, on the 5th day of March, 1858, entry was made in the words and figures following:

"PIO PICO, APPELLANT,
"*v.*
"THE UNITED STATES, APPELLEE. } No. 367.

"Now, on this day, come the parties aforesaid, by their attorneys aforesaid, whereupon the court delivered its opinion, rejecting the claim of the appellant;"

And whereas the records and proceedings of said court which have been transferred to the clerk's office of this court do not contain any order or decree rejecting said claim;

And whereas the United States surveyor general, in the absence of such a decree, cannot proceed to the survey of said lands as the public lands of the United States, nor can the claimant proceed with his appeal to the United States Supreme Court, as from a final decree of said district court:

Now, therefore, on motion of the United States district attorney for the district of California this day made, the counsel for the claimant having been heard—
43 It is ordered, adjudged, and decreed that the said claim of Pio Pico to the said land described in his petition to the said board of U. S. land commissioners be, and the same is hereby, rejected.

OGDEN HOFFMAN,
Dist. Judge for Cal'a.

SAN FRANCISCO, *June 15th*, 1870.

(Endorsed:) Filed June 15, 1870. Edw'd B. Cotter, clerk, by A. D. Greenwood, D. C.

Order that decree rejecting claim be entered.

April term.

WEDNESDAY, *June 15th, A. D.* 1870.

Present, the honorable Ogden Hoffman, judge.

THE UNITED STATES
vs.
PIO PICO. } Land case No. 367, S. D.

In this cause, on motion of W. W. Morrow, esq'r., assistant United States attorney, A. C. Peachy, esq., of counsel for claimant, being present and heard thereon, a decree rejecting the claim herein was this day duly signed.

And thereupon it is ordered that the said decree be duly entered herein.

(Endorsed:) Filed June 15th, 1870. Edw'd B. Cotter, clerk.

44 *Affidavit of Pio Pico.*

I, Pio Pico, a resident of the county of Los Angeles, in the State of California, do on oath depose and say:

1st. That, in the year 1831, Don Manuel Victoria, then commandante general and political chief of the Territory of Alta California, granted to me a provisional title or the right to occupy the place called "Jamul," in the now county of San Diego; and, in accordance with said grant, I was duly put in juridical possession of said place.

2nd. That, a very short time after said grant was made, I received from said Manuel Victoria, in accordance with my petition, a full and complete grant of said land in perpetuity.

3rd. That, in the year 1838, the wild Indians of Colorado attacked my said rancho of "Jamul" while I was in Santa Barbara, and killed four vaqueros, one major domo, two young Mexican girls, burnt my house to the ground, killed or drove away all my horses and cattle, and utterly destroyed everything on my said rancho, and that all the papers relating to and evidencing my said grant in perpetuity to the said rancho "Jamul" were burnt and destroyed at that time in my said house.

45 4th. That I did not present my title to the land commissioners for said rancho, altho' the claim was presented in my name. I never took any part in the prosecution of said claim, either before the said board of land commissioners or before the United States district court for the reason that Don Juan Foster, assuming and pretending to act as my agent, had agreed with Bonifacio Lopez, Philip Crossthwaite, Richard Rust, and William E. Rust, by a written agreement, made the 25th January, 1851, to sell and convey to them my said rancho of "Jamul," under which agreement said persons entered into the possession of said land; and that the said persons, and others claiming under them, really took entire charge of said claim before said board of commissioners and said court, and prosecuted the same in my name, never once consulting me in regard to the title, nor asking me any questions about it, until within the last month.

5th. That although I never confirmed the agreement entered into by Don Juan Foster, as my agent, with Bonifacio Lopez, Philip Crossthwaite, Richard Rust, and William E. Rust, I have confirmed the claim of the heirs of General H. S. Burton, late of the Army of the United States, who succeeded to the interest of the parties above mentioned, and with that object I have conveyed said rancho of "Jamul"
46 to the widow of General Burton, by a deed which is duly executed, acknowledged and recorded; and I have no interest in or claim to the land.

6th. That said rancho of "Jamul" mentioned in this affidavit, is the same land for which a petition was presented in my name to the U. S. board of land commissioners, No. 407, and which is numbered on the docket of the U. S. district court for the southern district of California, No. 367.

PIO PICO.

Subscribed and sworn to before me this 22d day of August, A. D. 1870.

[SEAL.] J. H. BLOOD,
Notary Public.

(Endorsed:) Filed Aug. 26, 1870. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

Affidavit of Maria A. Burton.

In the district court of the United States for the district of California.

47 THE UNITED STATES *vs.* PIO PICO. } Claim to rancho "Jamul," No. 407. Land comm'rs' No. 367. Dist. court, S. D.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

MARIA A. BURTON, being duly sworn, says as follows:

I am the widow of Gen'l Henry S. Burton, deceased, who was an officer of the Army of the United States, and died on the 4th day of April, 1869, intestate, leaving two children, viz, Nellie Burton, now of the age of 19 years, and Harry H. Burton, now of the age of 17 years; and I and our two children are his only heirs.

In the year 1853, my husband purchased from Bonifacio Lopez and Philip Crossthwaite their interest, being the undivided half interest in the rancho "Jamul," which is claimed in this case, and subsequently in the month of October, 1854, acquired the other half interest therein, which had previously been held by Richard Rust and William E. Rust, the interest of said Lopez, Crossthwaite, Richard and William E. Rust, having been acquired by them under an agreement of purchase and sale, in writing, entered into by them in the year 1857, with one
48 Juan Foster, acting as the agent of Pio Pico, the grantee of said land, and in his (said Pico's) name.

Immediately upon his acquiring the interest of said Lopez and Crossthwaite, that is in the year 1853, my husband took actual possession of the land, made improvements upon it, and occupied it until the month of July, 1859. From 1853 until the month of March, 1857, my mother and brother resided on the land, holding it for my husband. He was then stationed at San Diego, about 20 miles distant from the rancho,

and he and I spent part of our time on the rancho. From the month of March, 1857, until July, 1859, we resided there permanently. In the month of July, 1859, he was ordered on duty out of the State of California, and then left this State. He left my mother and brother and a major domo in possession of the land, holding it under him. They continued to reside on it from that time, and still reside on it, holding and claiming since my husband's death, for his heirs.

My husband continued in the service of the United States, as an officer of the Army until his death, and from the hardships and exposure he underwent during the war contracted the disease of which he died. He was on duty out of this State from the time he left it in 1859.

49 I am informed and believe that the claim to this land was presented before the board of land commissioners in the name of Pio Pico, by said Lopez, Crossthwaite, Richard and W'm E. Rust, and Juan Foster, or by some of them. After it was presented, my husband employed counsel to prosecute the claim, and entrusted the whole management of the case to them; and I am informed and believe that said Pio Pico never had anything to do with the presentation or prosecution of the claim.

I am informed and believe that said Pico, while said Lopez, Crossthwaite, Richard and William E. Rust were in possession, never recognized the rights they claimed under said agreement of purchase, nor ratified said agreement, but has denied that said Foster had any authority from him to enter into said agreement. He never, however, took any proceedings to assert any title to the land against my husband, or his heirs, but left my husband in the undisputed possession of the land, claiming it as owner, from the time he entered until his death, and since my husband's death said Pico, has, in favor of myself and my children, ratified and confirmed the claim of my husband and ourselves to the land, and for our protection and security, has exe-

50 cuted and delivered to me a deed of conveyance of the land to myself, which deed is duly acknowledged and recorded in the county of San Diego, where the land lies.

I did not know, and had never heard until about a month ago, that an absolute grant of the land had been made by Manuel Victoria to Don Pio Pico, and am confident that my husband was never aware of the fact. While he was in this State the nature of his duties prevented his giving much attention to his private affairs, and he had confided the care and management of this claim to his attorney.

MARIA A. BURTON.

Sworn & subscribed before me the 23rd day of August, A. D. 1870.

[SEAL.] W. H. CHEVERS,
Notary Public.

(Endorsed:) Filed Aug. 26, 1870. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

51 *Order granting rehearing, &c.*

In the district court of the United States for the district of California.

THE UNITED STATES *vs.* PIO PICO. } Claim to rancho "Jamul." No. 407. Land com'rs' No. 367. Dis't c't S. D.

This day came Maria A. Burton, and, by her attorney, Jno. J. Wil-

liams, moved the court to vacate the order granting an appeal in this case to the Supreme Court of the United States, and to set aside the decree heretofore entered adverse to said claimant's title and to grant a rehearing herein.

And it appearing to the court, by affidavits on file, that this cause had been submitted to the late district court of the United States for the southern district of California, on insufficient testimony of facts really existing, and that the judge of the said district court, on the case as submitted, delivered an opinion rejecting the said claim, but that no decree to this effect had ever been entered, prior to the repeal of the act of Congress creating such court, and that the decree hereby set aside was entered in this court on motion of the United States district
52 attorney, in accordance with the said opinion. And it further appearing that the real claimant herein was General Henry S. Burton, formerly of the U. S. Army, now deceased, who, while prosecuting his claim in the name of the original grantee, was ordered east, and in the late civil war lost his life in the service of his country, and that therefore no negligence or laches can justly be imputed to him in the failure to prosecute his claim with diligence, and in presenting the evidence necessary to establish its validity. And it further appearing that the said Henry S. Burton died leaving him surviving the said Maria A., his widow, and two children, Nellie Burton and Henry H. Burton, his sole heirs-at-law; and the United States district attorney, now present in court and informed of the above-recited facts, and further advised that the said widow and heirs are residing on said lands, and that there are no adverse titles thereto derived from the United States, consents that said motion be granted.

Now, therefore, it is hereby ordered that the said order, granting an appeal as aforesaid, be vacated, and that the said decree rejecting the said claim be set aside, and that a rehearing herein be granted, with leave to introduce further testimony in support of said claim and
53 title.

OGDEN HOFFMAN,
Dis't Judge.

(Endorsed:) Filed August 26th, A. D. 1870. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

Deposition of R. C. Hopkins on behalf of claimant, and stipulation.

I hereby certify that I have carefully examined the original espediente of the grant of the rancho of "Jamul," to Pico, on file in the archives of the office of the U. S. sur. general for California, and find—

First. That, on the 22d of March, 1831, Pio Pico petitioned the governor for a provisional grant of the rancho of "Jamul."

Second. That, on the 20th of April, 1831, Governor Victoria gave Pico a provisional grant for said rancho.

Third. That, on the 20th day of April, 1831, the concession was registered in the book of "registror," on folio 771, which forms a part of the Spanish archives referred to.

Fourth. That, on the 9th of July, 1831, Pio Pico, the grantee, was placed in provisional possession of the rancho of "Jamul," by
54 Santiago Arguello, military commandant of San Diego, and exercising civil authority.

Fifth. That, on the 23d day of December, 1845, Pio Pico, petitioned the governor for a grant in property, of said rancho Jamul.

Sixth. That, on the 23rd of December, 1845, the grant was issued as asked for; that this grant was submitted to the departmental assembly for approval on the 8th of May, 1846; that it was referred to the committee on vacant lands; that the committee made a favorable report on the 22d of May, 1846; and that, on the 3d of June, 1846, the report of the committee was affirmed by the departmental assembly, and the grant approved.

Seventh. That in the journals of the departmental assembly for the year 1846, the proceedings of the 3d of June show that the grant to Pio Pico of the rancho of Jamul, was approved during the public session of that day.

Eighth. That in the book of "toma de razon" of land grants for the year 1845, in the archives of the office of the U. S. sur. gen'l for California, the following entry is found, to wit: "Dn. 23 de D'b'e de 1845, se le libro titulo á D. Pio Pico, del terreno de Jamul, en es-
55 tencion de dos sitios de ganado mayor, poco mas ó menos."

Ninth. That in the Hartnell index of espedientes, also in said archives, the following entry is found, to wit: "Jamul; Pio Pico; 493;" and that the espediente hereinbefore described, on file in the archives, is numbered 493, corresponding with the number on the "Hartnell index."

And I further certify that I am familiar with the signature of Governor Victoria, and that I think his signature to the provisional grant of the 20th of April, 1831, is his genuine signature; and further, that I am familiar with all the other signatures found in said espediente, and that I think they are all genuine, and that said espediente is in every respect free from all cause of suspicion.

San Francisco, August 30th, 1870.

R. C. HOPKINS,
Keeper of Spanish Archives.

It is hereby stipulated and agreed that the foregoing certificate of R. C. Hopkins may be filed in the above cause with the force and effect of a deposition herein, and be read in evidence in proof of the facts herein stated; that said certificate refers to all the papers found in the
56 archives in reference to the Jamul ranche, and that, on the 23rd day of December, 1845, Pio Pico was Governor of California, and continued so to act until displaced by the authorities of the United States upon the conquest of this country.

L. D. LATIMER,
U. S. Attorney.
WILLIAMS & THORNTON,
Counsel for Claimants.

(Endorsed:) Filed Sept. 9th, 1870. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

Deposition of Pio Pico on behalf of claimant.

District court of the United States for the district of California.

THE UNITED STATES *vs.* PIO PICO. } "Rancho Jamul." No. 367, S. D.

Be it remembered that, on this 27th day of August, A. D. 1870, at

my office in the United States court building, in the city of San Francisco, personally appeared before me, Edward B. Cotter, a
57 commissioner, to take acknowledgments of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Pio Pico, a witness on the behalf of the claimant in the above-entitled suit. John J. Williams, esq., appeared as attorney for the claimant, and L. D. Latimer, U. S. dis't att'y, esq., as attorney for the United States.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by John J. Williams, esq.:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Pio Pico; my age is 69 years and upwards; my occupation is rancheria; and my place of residence, Los Angeles, Cal.

Question 2nd. Are you the same Pio Pico in whose name the claim to the rancho "Jamul" was prosecuted in the land commission and now in this court?

Ans. Yes; I am the same.

58 Ques. 3. You were one of the former governors, were you not, of California?

Ans. I was the last governor of Cal'a under Mexican law.

Ques. 4. Did you ever reside on this rancho "Jamul," and if so, when & how long?

Ans. I lived there with my family from 1831 to 1838. It was my home and I lived there until my house was burnt in the year 1838.

Ques. 5. During that time under what titles did you claim the said rancho?

Ans. Under the title given to me by Victoria 1831. I petitioned Victoria for the land and he gave me an order to be put in possession of it. Then the proper judge gave me juridical possession. Santiago Arguello was the judge, and after that Gov. Figueroa confirmed the title given me by Victoria.

Ques. 6. What became of your title-papers to said rancho?

Ans. In the year 1838, the wild Indians from the Colorado
59 River came in upon my ranch and stole all of my property and killed some of my men and set fire to my house, and I then lost all of my papers; among them was the grant & juridical possession to said land.

Ques. 7. Did you present or cause to be presented this claim to the land commissioner?

Ans. No sir, I never did.

Ques. 8. Who caused it to be presented?

Ans. I don't know.

Ques. 9. What became of the ranch after the house was burnt?

Ans. I left it without anybody there. No one took charge of it. Juan Foster acting as my agent sold the property.

Ques. 10. Had Foster any authority from you to sell that property?

Ans. No legal authority; but I consented to it when he told me that he had sold it.

Ques. 11. Do you recollect the names of the parties to whom he sold it?

60 Ans. I have some recollection that he sold it to Lopez & some

other parties. Foster told me that he sold it to Lopez and some other strange people. What is all that I recollect about it.

Ques. 12. Do you know who succeeded in interest to the said Lopez & others?

Ans. Mr. Burton bought it from them, and to ratify their rights I gave a deed to Mrs. Burton, the widow of the said Gen. Henry S. Burton, deceased.

Ques. 13. Did you ever pay any attention to this claim while it was pending in the land commission or this court?

Ans. No, sir; I never did.

Ques. 14. Did you ever ratify the sale made by Juan Foster to Lopez & others?

Ans. No; I never ratified that sale.

Cross-examination:

Ques. 15. When Victoria gave you provisional concession were
61 you then living upon the tract of land called "Jamul?"

Ans. Before the concession I was living at San Diego. Afterwards, very soon after, I moved on the rancho—in the course of one or two months. There were no buildings on the ranch when I went there; nothing but a small corral. My family and servants went to live there with me. I lived there all the time between 1831 and 1838. My family lived there with me. On business for the government I sometimes was away in different cases, but my property was there, my vaqueros and all my family was there. Jamul is about seven or eight leagues distant from San Diego; San Diego is the nearest town; I had a house at San Diego between 1831 & 1838 & before that time.

Ques. 16. Did not you & your family live most of the time, between 1831 & 1838, at your house in San Diego?

Ans. No, sir; most of the time at Jamul; I had a sister who lived most of the time at San Diego, but the rest of my family lived at "Jamul."

62 Ques. 17. During the time named did you not have in the pueblo of San Diego an office or place where you did business?

Ans. No, sir; I had a small house in the pueblo of San Diego where I sent all the provisions and products of the rancho. I never kept any books or memorandum; I sent my provisions there and they were sold in good faith; I was administrator of the mission of San Luis Rey at that time. I had a little office at the mission where I did the business of the mission. It was in the mission building. From San Luis Rey to Jamul it is about 21 leagues. I kept the papers relating to the title to rancho Jamul at the ranch, all in one place and altogether.

Ques. 18. How did it happen then that the title paper you say you received from Gov. Figueroa was burned, while the provisional decree of concession issued by Victoria was not burned?

Ans. What I had there was original from Victoria to me and it was burnt together with the other title.

63 Ques. 19. If there could be produced from the archives 20 years afterwards, a copy of the original concession of Victoria, how is it that a copy of the title papers issued by Figueroa cannot be produced.

Ans. I don't know why.

Ques. 20. Did you ever have any conversation with the Lopez named relating to the title you had of "Jamul?"

Ans. No, I never spoke to him about it.

Ques. 21. If you received title from Figueroa, why did you, about 1845, as governor, issue another title to yourself?

Ans. Because the title of Figueroa was burned and I had no one else to petition to. I petitioned as a citizen and granted it as governor subject to the approval of the departmental assembly.

Ques. 22. Could you not have obtained from the archives & records of the Mexican government a copy of the title or record of the title that was issued to you by Gov. Figueroa?

64 Ans. I did not know if the title existed or not on the records, I never saw it. I had to certify to it myself.

Ques. 23. How does it happen that you did not apply for title to Governor Juan B. Alvarado, who was governor from 1836 to 1842, or to Manuel Micheltorena, who was gov. from 1842 to 1845?

Ans. Because I did not sympathize with them very well and I did not want to ask them.

Ques. 24. Where was you when the the Indians burned your buildings at "Jamul?"

Ans. I was in Santa Barbara, in prison, by Juan B. Alvarado.

Ques. 25. At what time did Juan Foster sell to Lopez & others?

Ans. I don't know at what time.

Ques. 26. Did you or any of your family ever live upon the rancho after the Indians burned your house?

Ans. No, sir; I had nothing to do with it after that. Juan

65 Foster had charge of it as a friend or brother-in-law, and afterwards sold it.

PIO PICO.

Subscribed and sworn to this 27th day of August, A. D. 1870, before me.

EDW'D B. COTTER,
U. S. Commissioner.

(Endorsed:) Filed September 12th, 1870. Edw'd B. Cotter, clerk. By A. D. Grimwood, D. C.

TRANSLATION BY R. C. HOPKINS.

Copy of provisional grant of rancho of Jamul to Pio Pico.

MONTEREY, *Abril* 20, *de* 1831.

El interesado, en esta instancia, podrá ocupar provisionalm^te un sitio en el parage llamado Jamul, con objecto de cultivar sus tierras, y mantener sus ganados en los q^e sean puramente de abrevaderos; permitiendobele tamlien provisionalmente el uso del fierro y señal de q^e hace mencion y acompaña en oja reparada; la q^e rubricada p^r mi, se

66 tomará la razon correspond^te en el libro respectivo q^e obra en estra secretaria.

VICTORIA.

Translation.

The party interested in this petition can provisionally occupy one sitio, in the place called "Jamul," for the purpose of cultivating the lands of the same, and keeping his stock on such lands thereof as may be strictly pasture lands; permitting him also to use provisionally the brand and mark referred to, and which is shown upon a separate accompanying leaf, (oja,) which bears my rubrica; of which registry will be made in the corresponding book in the office of the secretary.

VICTORIA.

Copy of juridical possession.

S. DIEGO, *Julio* 9 *de*, 1831.

En el dia de la f'ha, comforme al anteced^te acto, se púro en posesion provisional del parage nombrado Jamul, al C. Pio Pico; haviendore demamardo, á poco mas menos, desde la entrada de d'ho Jamul cañada adentro, como una legua rumbo al oriente, tomando la falda q^e hace el vallecito de este nombre, de N. á S. como otra legua, veniendo á rematar á la misma entrada p^r otra cañada, de modo q^e forma el
67 sitio un triangulo, de largo como una legua, p^r lo mas ancho, otra lequa id. veniendo asi en disminucion hasta pintarse en la entrada d'ha de Jamul. Á cuyas operaciones asistieron de testigon el soldado Juan Rodriguez y vecino Isidoro Guillen; y para la devida constancia lo firmo como comand^te militar de este punto, encargado de los reg^s civiles de su jurisdiccion.

SANTIAGO ARGUELLO.

Translation.

SAN DIEGO, *July 9th*, 1831.

On this day, in conformity with the foregoing decree, I placed the citizen Pio Pico in provisional possession of the place named Jamul, having marked out to him, a little more or less, from the entrance of said Jamul, up the cañada (cañada adentro) about one league, towards the east, running along the "falda" made by the little valley of this name, from N. to S., about another league, so as to terminate at the same entrance by another cañada; so that the sitio forms a triangle, in length about one league, in the widest part about another league,
and diminishing to the entrance of the said Jamul. At which
68 proceedings assisted, as witnesses, the soldier Juan Rodriguez, and the citizen Isidoro Guilen. In witness whereof I sign as military commandant of this place, in charge of the civil jurisdiction of the same.

SANTIAGO ARGÜELLO.

I, R. C. Hopkins hereby certify the foregoing to be correct copies of the original provisional grant to Pio Pico of the rancho of Jamul, and of the juridical possession thereof, given by Santiago Argüello, military commandant of San Diego, together with correct translations of said originals, made by myself—the originals being on file in the Spanish archives of the office of the U. S. sur. gen'l for California.

San Francisco, Sept. 16th, 1870.

R. C. HOPKINS,
Keeper of Archives.

The above copies and translations are correct, and may be used as such in the trial of the case "The United States vs. Pio Pico, No. 367, S. D., in the district court of the United States for the district of California.

L. D. LATIMER, *U. S. Attorney.*
WILLIAMS & THORNTON,
Att'ys for Claimant.

69 (Endorsed:) Filed Sept. 19th, 1870. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

Order of substitution.

In the district court of the United States in and for the district of California.

THE UNITED STATES } L. C. No. 407. S. D. No. 367.
vs.
PIO PICO. }

This day came Maria A. Burton, widow, and Nellie Burton and Henry H. Burton, children and heirs of Henry S. Burton, deceased, by their attorney, John J. Williams, esq., and moved the court that their names be substituted on the record as claimants herein in the place of the name of Pio Pico; and, it appearing to the court that the said Henry S. Burton died, seized and possessed of the said rancho Jamul, having purchased the same in his lifetime, it is ordered that said motion be granted, and that this cause hereafter be conducted and proceed in the names of the said Maria A. Burton, Nellie Burton, and Henry H. Burton,
70 as the claimants of the said rancho Jamul.

OGDEN HOFFMAN,
Dist. Judge.

(Endorsed:) Filed September 21st, A. D. 1870. Edw'd B. Cotter, clerk. By A. D. Grimwood, D. C.

Opinion confirming claim.

United States district court, district of California.

THE UNITED STATES } No. 367, southern district. Rancho "Jamul."
vs.
PIO PICO. }

It appears in this case that Pio Pico, on the 22d day of March, 1831, petitioned Gov. Victoria for a provisional grant of the rancho of "Jamul."

On the 20th April the governor granted to the petitioner the right provisionally to occupy one sitio in the place called "Jamul" for the purpose of cultivating the lands, keeping his stock thereon, &c., &c.

On the 19th July, Santiago Arguello, military commander of San
71 Diego, and in charge of the civil jurisdiction of the same, in conformity with the governor's decree, put Pio Pico in provisional possession of the land, assigning to him boundaries which are described in his report.

Pico thereupon built a house upon the rancho and occupied it with his family and servants until 1838, when he was driven off by an incursion of the Indians and his house burnt. After this time the rancho appears to have been in charge of Juan Foster, his brother-in-law.

On Dec. 23, 1845, Pio Pico, who was then, as first vocal of the departmental assembly, acting governor, presented a petition setting out the provisional grant previously obtained by himself, and praying a title for the land. On this petition he issued a regular title to himself, but immediately transmitted the expediente to the departmental assembly, by whom it was referred to the appropriate committee and on the favorable report of the latter was finally approved.

In 1853, Gen. Burton, late of the United States Army, acquired Pio Pico's title under a sale made, it is said, without authority, by Juan

Foster. Pio Pico has since quit-claimed to the widow and heirs
72 of Gen. Burton his whole interest in the premises.

The documentary evidence on which the claim rests is of unquestioned authenticity. The petition of Pio Pico, the governor's concession, and the record of the possession given by Arguello are found in the archives.

Those records also contain the expediente of the grant by Pio Pico to himself, with the approval of the departmental assembly. The grant is also noted in Hartnell's continuation of Jimeno's index, and in the book known as "toma de razon."

There appears no room to doubt that, under the provisional grant, Pio Pico took possession, built upon, and occupied the land for about seven years, when he was driven off by the Indians, and that he continued to claim it and excercised control over it, by his brother-in-law, up to the time when it was sold by Foster, in 1851. In 1853, Gen. Burton acquired the title, and his family and that of his wife have continued in the possession and enjoyment of the land up to the present time.

I do not deem it material to consider in the abstract whether a
73 governor of California could, under the colonization laws, make a grant to himself, or what validity would in all cases be imparted to such a grant by the approval of the departmental assembly.

It may well be that such a grant, even though confirmed, if made by Pio Pico in the last days of his power, and under the expectation of the impending conquest of the country, if preceded by no preliminary concession, occupation, or settlement or other circumstance which would create an equity in the grantee's favor, and if followed by no fulfillment during the existence of the former government of those conditions which, under their system, constituted the consideration for the grant, should be treated as invalid by the United States. But in this case the circumstances are quite different. The provisional grant gave to Pio Pico an inchoate or imperfect title. It authorized him to occupy and improve the land under a just expectation, if not an implied promise, that the full title should be given him. When under this authority and with this expectation he made his home upon the land he acquired rights which, so far as I am informed, were uniformly respected by the former government.
74 No other person would have been able to obtain a grant for the land, and his own application for a full title would have been, unless political or personal hostility on the part of the governor prevented, at once acceded to.

The action of the departmental assembly, whether or not it be regarded as giving absolute validity to his own grant to himself, is at least a recognition of his equitable claims and of his rights to be secured in his ancient possession.

In the case of The United States vs. Alviso, the Supreme Court recognized and enforced the equities growing out of a possession of fourteen years, begun under a provisional permission to occupy while the expediente was being formed.

In the case at bar the possession had continued for more than sixteen years up to the time of the change of flags; since that time it has continued uninterrupted and undisputed up to the present moment, a period from its commencement of nearly forty years. The land now remains the property, and it is said the sole dependence, of the widow and children of a distinguished officer of our service. I am clearly of
75 opinion that the manifest justice of the claim, as well as the principles established by the Supreme Court demand its confirmation.

A decree to that effect in favor of the widow and heirs of the late Gen. Burton, will accordingly be entered.

Rendered September 21st, 1870.

(Endorsed:) Filed September 21st, 1870. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

Decree of confirmation.

In the district court of the United States in and for the district of California.

THE UNITED STATES
vs.
MARIA A. BURTON, NELLIE BURTON, AND Henry H. Burton, widow and heirs of Henry S. Burton, dec'd. } L. C. No. 407. S. D. No. 367.

On appeal from the decision of the board of U. S. land com'rs.

This cause came on to be heard at this term on the certified transcript of the board of commissioners on private land claims in California, and of the papers and evidence on which the same was founded,
76 and upon the further evidence taken by order of the court, and was argued by counsel—the United States district attorney appearing for The United States and J. J. Williams for the claimants.

And thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the decision of the board of United States land commissioners, rejecting the claim for the rancho Jamul, be, and the same is hereby, reversed and set aside.

And it is further ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that the claim of the said Maria A. Burton, Nellie Burton, and Henry H. Burton, is a good and valid claim, and that the same be, and is hereby, confirmed to them as the legal representatives of the said Henry S. Burton, deceased.

The land of which confirmation is hereby made, is of the extent of two square leagues, more or less, and is known by the name of "Jamul," and is situated in the county of San Diego, State of California; being the same which was granted, provisionally, to Pio Pico, on the 20th day of April, 1831, by Manual Victoria, political chief and
77 governor of California, and of which, by order of said governor, the said Pio Pico was given juridical possession, and which was subsequently granted to Pio Pico, which last grant was approved by the departmental assembly.

For more particular description of the premises hereby confirmed, reference is made to the espediente and other documents, among the Mexican archives now in custody of the surveyor general of the United States for the State of California, copies of which *is* also contained in the transcript of this cause on file in the office of the clerk of this court.

OGDEN HOFFMAN,
Dist. Judge.

Entered in book 1, judgments & decrees, page 367.

(Endorsed:) Filed Sept. 21st, 1870. Edw'd B. Cotter, clerk.

78 *Order granting appeal to Supreme Court of the U. S., from decree confirming claim.*

At a stated term of the district court of the United States of America for the district of California, held at the court room, in the city of San Francisco, on Saturday, the fifth day of August, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the Honorable Ogden Hoffman, judge.

THE UNITED STATES *vs.* MARIA A. BURTON, NELLIE BURTON, & Henry H. Burton, widow & heirs of Henry S. Burton, deceased, & successors in interest, & substituted, by order of court, as parties in place of Pio Pico.	No. 367. U. S. dist. court. No. 407, land commission.

And now at this day, on motion of L. D. Latimer, esq., United States attorney, it is ordered that an appeal be, and hereby is, granted and allowed to the Supreme Court of the United States, from the decree of confirmation of this court, entered on the 21st day of September,
79 A. D. 1870, confirming the claim in this cause.

OGDEN HOFFMAN, *Dist. Judge.*

(Endorsed:) Filed August 5th, 1871.

EDW'D B. COTTER, *Clerk.*
By A. D. GRIMWOOD, *Deputy.*

Notice that an appeal to the U. S. Supreme Court has been granted & that it will be prosecuted.

United States district court, district of California.

THE UNITED STATES *vs.* MARIA A. BURTON, NELLIE BURTON, & Henry H. Burton, widow & heirs of Henry S. Burton, deceased, & successors in interest, & substituted, by order of our court, as parties in place of Pio Pico.	No. 367, U. S. dist. court. " 407, land commission.

Notice is hereby given to all whom it may concern, that an appeal to the United States Supreme Court, from the decree of the district
80 court of the United States for the district of California, entered on the 21st day of September, A. D. 1870, confirming the claim herein, was granted, ordered, and allowed on the 5th of August 1871, by the said United States district court, and that the said appeal will be prosecuted.

L. D. LATIMER,
U. S. Attorney.

AUG'T 7TH, 1871.

To Messrs Archibald C. Peachy & Thornton & Williams, attorneys for Maria A. Burton, &c., & Edward B. Cotter, clerk of U. S. dist. court.

We hereby acknowledge service of a copy of within notice of appeal this 7th day of August, 1871.

WILLIAMS & THORNTON,
Att'ys for Heirs of Henry S. Burton.

(Endorsed:) Filed August 7th, 1871. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

81 *Citation.*

The United States of America to Maria A. Burton, widow, and Nellie Burton and Henry H. Burton, children and heirs of Henry S. Burton, dec'd, greeting:

Whereas a decree was entered on the 21st day of September, A. D. 1870, by the district court of the United States for the district of California, in the case of the United States vs. Maria A. Burton, widow, and Nellie Burton and Henry H. Burton, children and heirs of Henry S. Burton, dec'd, confirming the claim to the rancho "Jamul," situated in the county of San Diego, State of California; and whereas the said United States has appealed to the Supreme Court of the United States from said decree of the said district court, so entered against said United States as aforesaid, as appears by the order of said court granting said appeal, filed in the clerk's office of said district court:

Now, therefore, you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, to show cause, if
82 any there be, why the said decree, entered in said cause against the said United States as aforesaid, as in the said order granting this appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco, this ninth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

OGDEN HOFFMAN, [SEAL.]
Dist. Judge.

(Endorsed:)

We hereby acknowledge that service of a copy of the within citation, this 11th day of September, A. D. 1871, was made on us.

WILLIAMS & THORNTON,
ARCH'D C. PEACHY,
Att'y for Respondents.

Filed September 14th, 1871. Edw'd B. Cotter, clerk, by A. D. Grimwood, D. C.

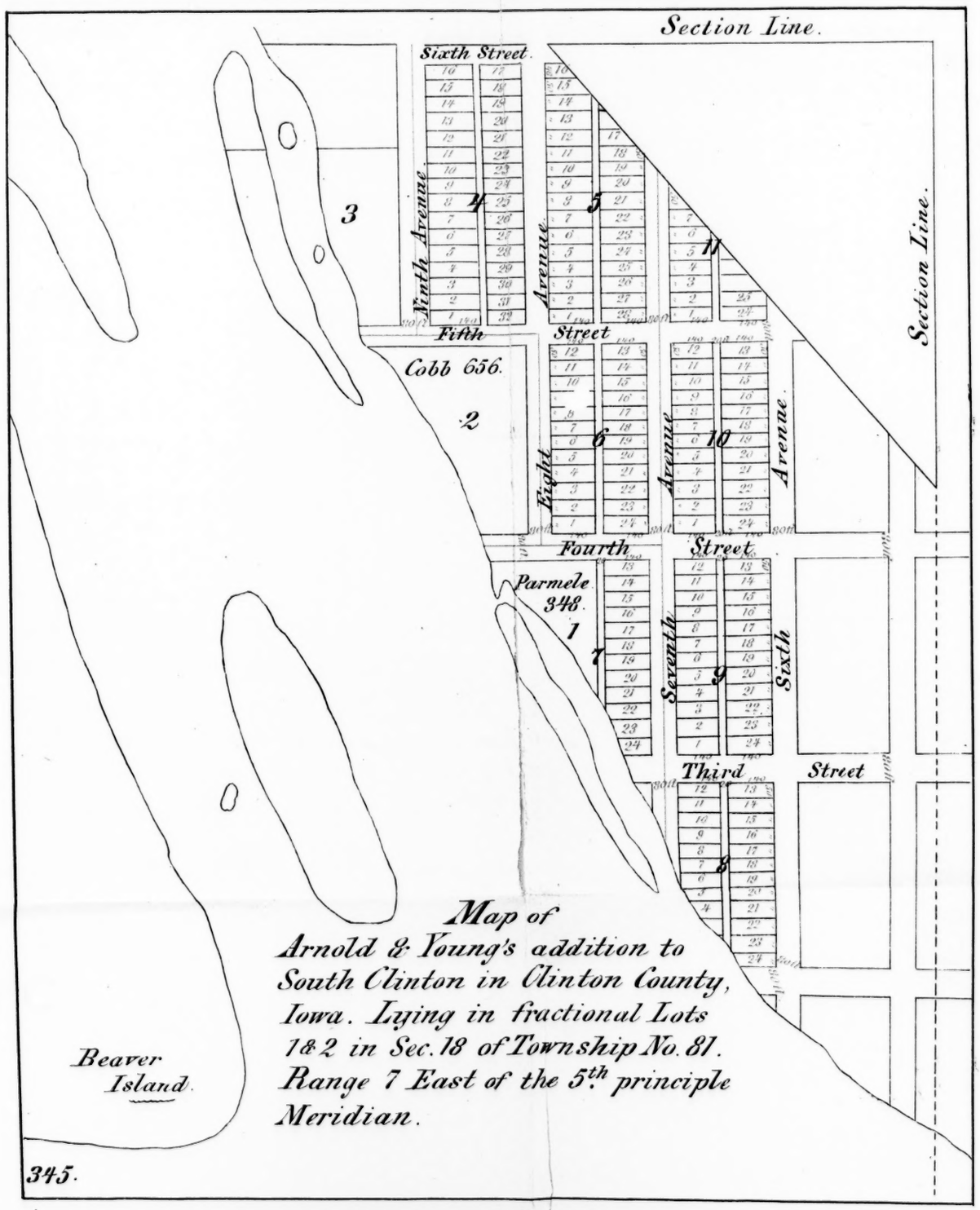
83 I, Edw'd B. Cotter, clerk of the district court of the United States for the district of California, do hereby certify the foregoing and hereunto annexed eighty-two pages, numbered from "1" to "82," both inclusive, to be a full, true, and correct transcript of the proceedings, together with the pleadings, depositions, and opinions in the case entitled, "The United States vs. Pio Pico, S. D., No. 367," and the same constitutes the transcript on appeal in said case.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 15th day of December in the year of our Lord

one thousand eight hundred and seventy-one, and of our independence the 96th.

[SEAL.] EDW'D B. COTTER, *Clerk.*

(Indorsement on cover :) No. 585. The United States, appellants, vs. Maria A. Burton, widow, Nellie Burton and Henry H. Burton, children & heirs of Henry S. Burton, dec'd. California D. C. U. S. Filed 20th October, 1871.


Section Line.
Sixth Street.
Ninth Avenue.
Avenue
Fifth
Street
Cobb 656.
Eight
Avenue
Avenue
Fourth
Street
Parmele
348.
Seventh
Sixth
Third
Street
Section Line.
3
4
5
11
2
6
10
1
7
9
8
Beaver
Island.
Map of
Arnold & Young's addition to
South Clinton in Clinton County,
Iowa. Lying in fractional Lots
1 & 2 in Sec. 18 of Township No. 81.
Range 7 East of the 5th. principle
Meridian.
345.

No. 2992.

Second patent to White

No. 1440.

Fig. 1.

Fig. 2.

Fig. 3.

Fig 4.

Forham patent

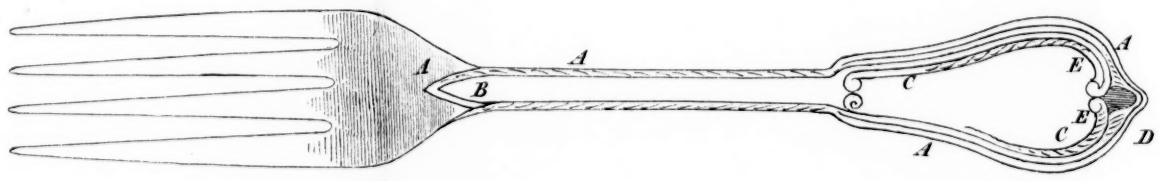
No. 2551

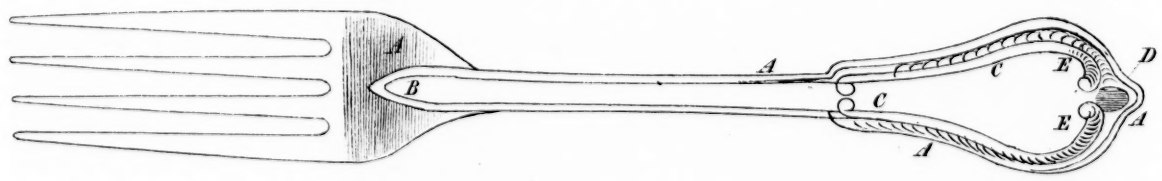
First patent to White

3

№ 2551

Le Roy S. White's Design for Spoon Handles - Fork Handles etc.



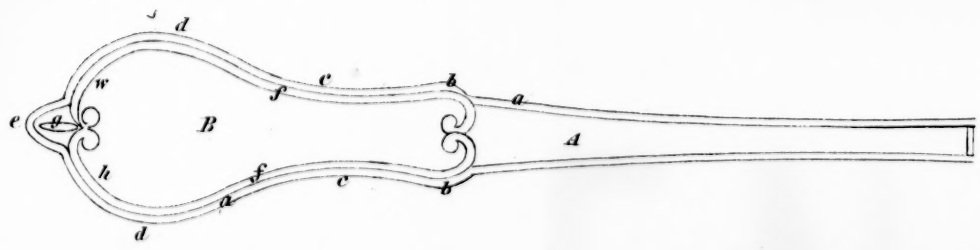


Witnesses:
Theo Tusch
J. A Service

Inventor:
Le Roy S White
Per Munn & Co
Attorneys

4

L. S. White's Design for Spoon &c. Handles.



Witnesses:

M Coomb
Wheeler

L. S. White
per Brumbcomb & Co
Atty

W

Exhibit A
Offt Cowdin
Notary Public

1 Propeller
1 Propeller
2 Propellers
2 Propellers

S

Exhibit B
Offt & Cowdin
Notary Public

Richmond
Richmond

N

D R Corns

Ophesurt Corns

Vessel in shore

Branch

Barrow

1=

S

No. 394. { Propeller Dean Richmond
vs.
Elisha B. Dean et al. } page 104.

W
104.